IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8372 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

OADH RADHUBHAI AMBARAM

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive

detention dated 25th August, 1999, made against him by the District Magistrate, Mehsana, under the powers conferred upon him under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It appears that as many as many as seven prohibition offences have been registered against the petitioner and are pending trial. The said offences were registered during the period from 14th April, 1998 till 20th February, 1999. In each of the said cases, a quantity of country liquor was recovered from the possession of the petitioner. The petitioner is, therefore, held to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are held to be 'prejudicial to the maintenance of public order' within the meaning of section 3 (4) of the Act and the explanation thereto.

It is contended that though the last of the above referred offences was registered on 20th February, 1999 and no other material has been taken into consideration, the impugned order was not made till 25th August, 1999, that is to say, more than six months' after the cause of action. The said delay has snapped the live link between the cause of action and the impugned action. The impugned action is, therefore, vitiated. Besides, the petitioner had made a representation on 8th October, 1999, to the Detaining Authority. The Detaining Authority ought to have forwarded the said representation to the Government for its consideration. Instead, the Detaining Authority himself considered the said representation and rejected the same on 3rd November, 1999. The Detaining Authority also has not explored the possibility of seeking cancellation of bail granted to the petitioner under section 437 (5) CRPC. The order of detention is, therefore, vitiated, and the continued detention of the petitioner is null and void.

None of the contentions is answered. The Detaining Authority has not explained the delay occurred in making the order after the date of cause of action. Such unexplained delay shall mean that there was no imminent danger or apprehension of breach of public order and the order of detention should, therefore, stand vitiated. Further the order of detention having been approved by the State Government on 4th September, 1999, the Detaining Authority had become functus-officio and could not have considered the representation made by the petitioner through his advocate on merits. The Detaining Authority failed to forward the representation of the

petitioner to the State Government, the petitioner's right to make the representation against the order of preventive detention is thus infringed and the continued detention of the petitioner is vitiated. In view of the Division Bench judgment in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS STATE OF GUJARAT & ORS (1995 {2} GLR, 1134), the non-consideration of possibility of moving the court for cancellation of bail under section 437 (5) CRPC also shall vitiate the order of detention for non-application of mind. The continued detention of the petitioner is, therefore, un-called for and unwarranted.

Petition is allowed. The impugned order dated 25th August, 1999 is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI